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June 25, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Each Electrical Utility's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended)
Docket No. 2019-176-E
Docket No. 2019-185-E (Duke Energy Carolinas, LLC)
Docket No. 2019-186-E (Duke Energy Progress, LLC)

Dear Ms. Boyd,

Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP," and together with DEC, the "Companies" or "Duke") are submitting the enclosed letter in response to the letter filed by Johnson Development Associates, Inc. ("Johnson Development") and the South Carolina Solar Business Alliance, Inc. ("SCSBA") on June 25, 2019 ("Johnson Development/SCSBA June 25 Letter"). The Johnson Development/SCSBA June 25 Letter is in response to the letter filed by Duke on June 20, 2019 and the letter filed by Dominion Energy South Carolina, Inc. ("DESC") on June 24, 2019.

At issue in the litany of filings submitted in the above-referenced dockets is the manner in which the Commission should procedurally approach its statutory obligation under S.C. Code Ann. § 58-41-20(A) to approve each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other necessary terms and conditions ("PURPA Implementation and Administration Provisions") by November 16, 2019. S.C. Code Ann. § 58-41-20(A)(2) requires that proceedings implementing the PURPA Implementation and Administration Provisions of Act 62 "shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing."

Under the approach advocated for by Johnson Development and SCSBA, the proceeding addressing avoided cost methodology, which Johnson Development and SCSBA refer to as a

"consolidated preliminary phrase" would not permit discovery, testimony, or an evidentiary hearing. In an attempt to circumvent the statutory requirement in Section 58-41-20(A)(2), Johnson Development and SCSBA now characterize the decision to be made by the Commission with regard to the avoided cost methodology as "guidance" to be issued by the Commission. Referring to the outcome of the avoided cost methodology proceeding as "guidance" does not change the fact that any decision by the Commission in implementing the PURPA Implementation and Administration Provisions would be formal disposition of a proceeding[1] and would not absolve the Commission of its statutory obligation pursuant to Section 58-41-20(A)(2). The Companies read the Johnson Development/SCSBA June 25 Letter to admit that this "consolidated preliminary phrase" would not conform to the statutory requirements of Section 58-41-20(A)(2), and to argue that Section 58-41-20(A)(2) does not apply to all proceedings implementing the PURPA Implementation and Administration Provisions of Act 62. The language of Section 58-41-20(A)(2) is clear that the proceedings under this statutory subsection "shall include" an opportunity for (i) intervention; (ii) discovery; (iii) filed comments or testimony; and (iv) an evidentiary hearing. No support exists in the statute for excluding the proceeding related to the avoided cost methodology from this requirement.

The avoided cost methodology issues enumerated in the Johnson Development/SCSBA June 25 Letter on pages 2-3 are not simple issues of mere "framework"[2] as Johnson Development and SCSBA purport, but are complex and controversial topics that are often the subject of protracted litigation at other state utility commissions across the country, many of which have not been substantively addressed by this Commission. Notwithstanding the rights afforded to the parties pursuant to Section 58-41-20(A)(2), the right of procedural due process, as protected by Art. I § 22 of the State Constitution, entitles the parties to present evidence and participate in an evidentiary hearing on these issues. The South Carolina Supreme Court has provided that "[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review." *Kuschner v. City of Planning Comm*., 376 S.C, 165, 171, 656 S.E.2d 346, 350 (2008), *citing* S.C. Const. Art. Art. I § 22; *Stono River Protection Assn. v. S.C. Dept. of Health and Envt'l. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). The procedural approach advocated for by Johnson Development and SCSBA would restrict Duke (and other parties) from this right.

In sum, the procedural approach and schedule supported by Johnson Development and SCSBA violates S.C. Code Ann. Section 58-41-20(A)(2) and the parties' rights to procedural due

[1] See S.C. Code Ann. Regs. § 103-817(D).

[2] Consistent with the arguments offered by DESC, the Companies maintain that creating a "consistent [avoided cost] framework" across all electrical utilities, as recommended by Johnson Development and SCSBA is practically infeasible given the inherent differences between the electrical utilities and their individual avoided cost methodologies. Indeed, Johnson Development and SCSBA acknowledge in their Joint Comments filed on June 18, 2019, that "the Act does not prohibit each utility from adopting its own Commission-approved methodology to calculate avoided cost rates" and that "each of these methodologies can be implemented in various specific ways." (Joint Comments at p. 2.) To that end, Duke maintains that no efficiencies can be gained by attempting to impose the same "framework" across multiple utilities that utilize different methodologies.

process, in addition to presenting a wholly unworkable (and incomplete) procedure schedule that provides entirely insufficient time for these complex issues to be litigated and decided by the Commission. Therefore, for the reasons described herein and those described in the Companies' letters filed in the above-referenced dockets on June 20, 2019, the Companies respectfully request the Commission reject the proposed schedule of Johnson Development and SCSBA and adopt the procedural schedule filed by the Companies.

Should you have any questions regarding this request, please do not hesitate to contact me at 803.988.7130.

Sincerely,

Rebecca J. Dulin

cc: Ms. Becky Dover, SC Department of Consumer Affairs
Ms. Carri Grube-Lybarker, SC Department of Consumer Affairs
Mr. James Goldin, Nelson Mullins Riley & Scarborough, LLP
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Mr. Andrew M. Bateman, Office of Regulatory Staff
Ms. Nanette S. Edwards, Office of Regulatory Staff
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Mr. K. Chad Burgess, Dominion Energy South Carolina, Inc.
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